

MINUTES
Town of Lexington
Reception and
REGULAR COUNCIL MEETING
September 8, 2020

Town Council held a reception at 5:00 p.m. for Clarence Anthony, CEO and Executive Director for the National League of Cities and Seantae Byers, Senior Executive, Member and Partner Engagement for the National League of Cities followed by the regular September Council meeting at 6:30 p.m. in the Council Chambers on September 8, 2020. No Executive Session was held. The Council meeting was attended by: Mayor Steve MacDougall, Mayor Pro-Tem Hazel Livingston, Councilmembers Kathy Maness, Todd Carnes, Ron Williams, and Steve Baker. Councilmember Todd Lyle was absent.

Staff members present were: Town Administrator Britt Poole, Assistant Town Administrator Stuart Ford, Municipal Attorney Brad Cunningham, Assistant to the Town Administrator Wesley Crosby, Transportation Director Randy Edwards, Police Chief Terrence Green, Assistant Police Chief Major Matt Davis; Planning, Building and Technology Director John Hanson, Business License Manager Sonya Lee, Utilities and Engineering Director Allen Lutz, Utilities Superintendent David Patton, Finance Director Kathy Pharr, Parks and Sanitation Director Dan Walker, Assistant Parks and Sanitation Director Johnny Dillard, Downtown Venue Promoter Walker Brewer, Communications Manager Laurin Barnes, I.T. Manager Beatrice Daniels, Digital Media Coordinator Darrell Pritchard, Assistant Municipal Clerk Karen Hanner and Municipal Clerk Becky Hildebrand.

There were approximately fifteen (15) citizens present for the Council meeting and one member of the news media was present.

INVOCATION, PLEDGE OF ALLEGIANCE AND CALL TO ORDER: Mayor MacDougall welcomed everyone to the meeting, including special guests from the National League of Cities, followed by introductions of the Council Members. He called on Mayor Pro-Tem Livingston to give the invocation. Mayor MacDougall called on the Lexington Police Department's Honor Guard for Posting of the Colors. Mayor MacDougall led in the Pledge of Allegiance. Mayor MacDougall called the meeting to order at 6:36 p.m.

DELETIONS ON AGENDA: None. Mayor MacDougall requested that Councilmember Baker read New Business #3 in the absence of Councilmember Lyle.

PRESENTATIONS

1. **Presentation of Key to the Town for Clarence E. Anthony, CEO and Executive Director, National League of Cities – Councilmember Maness:** Councilmember Maness stated that the Mayor does not issue Keys to the Town very often and it takes almost a lifetime of achievements to warrant such an honor. She was thrilled that Mayor MacDougall allowed her the privilege of

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presenting a Key to the Town to the National League of Cities' CEO and Executive Director, Clarence Anthony. Councilmember Maness stated that she would provide some background first followed by what Clarence has been doing recently for towns across the country. Clarence was one of six children raised in an agricultural area of South Florida near Lake Okeechobee. He put himself through Florida Atlantic University where he earned a Master's Degree in Public Administration. At the age of 24, Clarence was elected Mayor of South Bay, Florida and remained the Mayor until 2008. During that time he also served as President of the Florida League of Cities and in 1999 served as the President of the National League of Cities. Following Clarence's time in office he represented local governments on the world stage as Founding Treasurer and Interim Manager of United Cities and Local Governments. Clarence later founded Anthony Government Solutions, a consulting firm focused on policy development, strategic planning and management for government and private organizations. During NLC's 2012 Congress of Cities and Exposition, held in Boston, Clarence was named CEO and Executive Director for the National League of Cities. Councilmember Maness stated that if everyone was keeping up, she had just covered about 30 years of a career in which all roads led to the National League of Cities where we all benefit from Clarence's vast background in leading towns, cities and villages to their full potential while facing many challenges. She added that it has been seven years since Clarence was appointed CEO and Executive Director of NLC and here we are in this unprecedented year of 2020. Clarence proves each day that there is truly no rest for the weary. He speaks for the 19,495 towns across the national who have battled COVID-19, earthquakes, hurricanes, flooding, social unrest and more. Clarence understands elected officials and the citizens they represent. He understands municipal issues from citizen stability, loss of funding and infrastructure needs – all of which are urgent requirements for the survival of our towns. Clarence understands the importance of training local elected officials so they can be proactive in addressing state and federal policies that affect the daily lives of small towns. He has demonstrated his commitment to us and to all American towns to continue his life's work and NLC's goals. Clarence works every day with leaders in Washington, DC to lobby support, research and advocacy for city leaders as we strive to pave the road for infrastructure, local funding, fair housing, public safety, recreation, economic development and strategic planning so all citizens and future generations will always have roots in the town they call home. Councilmember Maness stated that she has served as First Vice President at the National League of Cities this year and has come to know Clarence as a friend, like so many other city leaders. She added that there are many success stories, accolades and titles that Clarence could share, but none as important as his titles of son, husband and Dad! Councilmember Maness stated that on behalf of the Mayor and all the Councilmembers, she would like to present Clarence with the Key to the Town and thank him for giving leaders the tools to be better problem solving, ethical and efficient leaders for our citizens. She asked everyone to join her in congratulating Clarence Anthony, CEO and Executive Director for the National League of Cities. Councilmember Maness presented the Key to the Town and

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certificate which read: *“In recognition of your service to municipalities for over 30 years and for sharing your knowledge, experience, and voice to initiate change and improvements through the National League of Cities so leaders and citizens from towns, cities and villages across the nation can always have a better and safe place to live and work.”*

Mr. Clarence Anthony, CEO and Executive Director, National League of Cities, thanked the Mayor, Council and Staff for this opportunity to be in Lexington. He added that it was also an opportunity for him to come to Lexington and get to know his incoming President of the National League of Cities, Councilmember Kathy Maness. Mr. Anthony stated that these are extraordinary times and it is going to take extraordinary leadership to our nation and our municipalities through this trying time. He added that none of us could have imagined COVID-19 or the social unrest that we have in our nation, but he would bet on municipal leaders more so than anyone else to help us heal first, to help us continue to lead and to help us solve the challenges that many of our citizens are asking and rely upon us to solve. Mr. Anthony stated that Todd Glover is present from the South Carolina Municipal Association and Mayor Huff of Inman, South Carolina who is President and all of us working together at the state level or the local level and we are the ones who can really lead at this time. He stated that Councilmember Maness is at the right time for their organization because she knows the organization, she knows municipal issues and she has been President of Women in Municipal Government, involved in youth education and family issues as well as education issues. Mr. Anthony stated that if anyone is the right leader, at the right time, Councilmember Maness is that leader. He added that he and the NLC Staff are very proud to partner with her and that the Town of Lexington is proud that one of their Councilmembers will be the next President of the National League of Cities. Mr. Anthony thanked the Mayor and Councilmembers and assured them if he got in trouble and needed to use his Key to the Town, he would be pulling it out and say he has the Key to the Town and what truly an honor it is and very special to him.

Councilmember Maness thanked Mr. Anthony for being here tonight along with Mr. Todd Glover, Executive Director of the South Carolina Municipal Association and Mayor Huff from Inman, South Carolina and also serves as President of the South Carolina Municipal Association. She also welcomed Ms. Seantae Byers, Senior Executive, Member and Partner Engagement with NLC. Councilmember Maness added that Seantae is from Washington, DC but since she was born in Charleston, South Carolina, she is a true Carolina Girl.

Mayor MacDougall thanked Mr. Anthony, Mr. Glover, Mayor Huff and Ms. Byers for coming to Lexington.

2. **Presentation from Ms. Angelle LaBorde, President and CEO, Lexington Chamber and Visitors Center:** Ms. LaBorde thanked the Mayor and Council for allowing her to introduce herself as the new President and CEO of the Lexington

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Chamber. She stated that she has been in the Chamber business for the past 25 years and she is a Certified Chamber Executive. Ms. LaBorde added that she began her career in her hometown of New Orleans at the New Orleans Chamber and then led the Jefferson Parish Chamber of Commerce. She stated that right after Hurricane Katrina, she was blown into South Carolina and had been in Greenwood, South Carolina for the past 14 years. Now she is very proud to call Lexington her home. She has relocated to Lexington and is delighted to now be a part of the Lexington community. Ms. LaBorde is proud to now serve the 61 year old Lexington Chamber and Visitors Center which is accredited with four stars from the United States Chamber of Commerce and is an active member of the State Chamber. She stated that the Chamber Board of Directors is an active group and led by Chairwoman Angela Klosterman from First Citizens Bank. She stated that she has a dedicated staff of six and they represent 800 business members referred to as shareholders. Ms. LaBorde stated that she enjoys being an advocate and communicating the challenges of advancing our community. She believes that together we can accomplish more and that open communication is the key to success. Ms. LaBorde stated that the business community can offer leadership, however, we know that we are not on an island. She added that they rely on the expertise of governmental leaders and staff to help them advance the community thus achieving prosperity for everyone. She stated that the previous speaker mentioned all the things that Town Council handles and they have to tackle some very tough issues. She thanked the Council for their willingness to reduce property taxes in the Town this past spring as part of the Hospitality Tax initiative and the business community appreciates the Council's support. She stated that the Chamber knows that managing the Town's growth is challenging. Ms. LaBorde stated that they are interested in promoting consistent business regulations between the Town and the County. She added that open communication and dialogue would help minimize regulations that are detrimental to business and company expansions. Ms. LaBorde hoped that policy decisions can be developed to support municipal government and businesses simultaneously and in the best interest of business growth. She stated that the Chamber sincerely appreciates the support of their annual Accommodations Tax Request because they are proud to operate the Visitors Center and welcome newcomers to the area. Ms. LaBorde announced that last year the Chamber launched the Lexington Visitors Guide and produced 8,000 copies. She reported that it has been extremely popular and well received. They have plans to distribute 10,000 copies this year which will go to Welcome Centers and key points in and around Lexington County. She believes that they have an opportunity to expand their visitor outreach. They would like to step it up a notch and she asked if Council would work with the Chamber to form a Tourism Advisory Council. Their goals could be to explore a tourism audit of visitor experiences and attractions; further develop their branding and messaging; explore wayfinding signage and areas for improvement; create a strategy to further market our attractions via increased traffic to their web sites and social sites; focus on more targeted social media advertising thus increasing the number of followers and thus turning those followers into visitors and perhaps even residents. Ms. LaBorde stated there is an interest in forming partnerships to create a business and

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convention center in the Lexington area to serve the community's needs which may be a long term goal. She added that the Chamber had previously gone on record to support the County's Penny Tax Referendum to help reduce traffic congestion. She asked if that issue comes back up they will be following it and do their best to help promote what needs to be done to alleviate traffic in the area. One of their priorities is better communication and engagement with government officials and they hope for more one on one meetings to discuss areas of mutual concern. Ms. LaBorde closed by stating that working together we are stronger as a community. She stated that both business and government have mutual goals for economic and community prosperity. She added that the Chamber shareholders value the Town's leadership and they are committed to a more prosperous Lexington and she looked forward to working with each member of Council.

Mayor MacDougall thanked Ms. LaBorde for her presentation and added that he looked forward to working with her. There were no questions from Council.

3. **Proclamation for September 2020 as First Responder Month – Councilmember Baker:** Councilmember Baker read a Proclamation proclaiming September 2020 as First Responder Month in the Town of Lexington. The Proclamation acknowledged that the Town of Lexington and the Lexington Police Department serves alongside Lexington County First Responders, State First Responders as well as military, medical, education and essential workers who put the health of our citizens first while putting their own risk aside. COVID-19 placed overwhelming uncertainty on all First Responders who added another layer of protection against an invisible threat. The Proclamation also recognized many unsung heroes who had to rise to new challenges during the COVID-19 pandemic including: Postal Workers, Pharmacy Staff, Grocery Store Employees, Farmers, Restaurant Staff and Deliveries, Information Technology Providers, Utility and Sanitation Workers, Truck Drivers, Day Care Workers, Nursing Home and Home Health Care Staff, Custodians and the neighbor next door who delivered a meal, just to name a few. (Full copy attached.) Councilmember Baker presented the Proclamation to Chief Terrence Green, Lexington Police Department.

Mayor MacDougall thanked Chief Green, the Lexington Police Department, and all other First Responders for the job they continue to have to do through this pandemic.

VISION PLAN UPDATE

Mayor MacDougall announced: (1) Construction is moving along on the Icehouse Amphitheater Pavilion. The foundation should be complete soon followed by building the columns. The Pavilion will be a brick, open-air building with overhead fans and outdoor heaters. Following the completion of the Pavilion, there will be women's

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restrooms and air conditioning added to the current restroom facilities. (2) The Market at Icehouse is on Saturdays from 9:00 a.m. to 12:00 p.m. through the end of September. (3) Gibson Pond Park rebuilding work continues on the park's dam. Demolition of the old dam is complete and now work has begun on the new base foundation. The dam will feature two docks and a walking pier. It is expected to take about a year to complete and the park will remain closed during construction. (4) These projects and more are a result of the Town's Vision Plan which was reviewed and updated in July 2019. The entire Vision Plan is may be viewed on the Town's web site at www.lexsc.com.

TRAFFIC UPDATE

Mayor Pro-Tem Livingston gave the Traffic Update: (1) Construction continues for a new median on Columbia Avenue between Reed Avenue and Old Chapin Road. Intermittent lane closures will take place at night over the next several weeks. (2) The North Lake widening project near Azalea Drive has begun. A water line relocation is currently in progress and will be completed soon. Construction activity will be ongoing so citizens were asked to use extra caution in this area. (3) The next Traffic Committee meeting will be held on Wednesday, October 28th at 8:00 a.m. in the Municipal Complex Conference Center. (4) Citizens were encouraged to call 803/358-7273 if they were aware of a traffic signal issue, unsafe roadway situations, or a pothole that needs repair.

OLD BUSINESS: None.

NEW BUSINESS

1. **Ratification of Emergency Ordinance #8 Requiring Individuals to Wear Face Coverings:** An emergency phone poll was taken on August 31, 2020 regarding Emergency Ordinance #8, also referred to as the Mask Ordinance. (Copy attached.) The result of the phone poll was a majority vote of Council in favor of approving the Ordinance for another sixty (60) days (in favor: MacDougall, Livingston, Maness, Williams and Baker. Opposed: Carnes and Lyle). Council was asked to ratify the results of the phone poll.

This Ordinance differs from the previous Ordinance in that an automatic suspension is built in if Lexington County falls into low risk range according to DHEC standards. An automatic reinstatement is also inserted in case Lexington County moves back into the moderate risk range according to DHEC. DHEC defines low risk range as 100 or fewer new cases per 100k in a two-week period. Moderate risk range is defined as more than 100 cases per 100k in a two-week period.

A motion was made by Councilmember Maness and seconded by Councilmember Baker for the ratification of the Emergency Ordinance #8 phone poll vote.

Mayor MacDougall asked if there were any questions from Council.

Councilmember Carnes asked if Council was going to hear from people who requested to speak at this point. Mayor MacDougall stated that public comment is usually at the end of the meeting, but since there were only three people who had requested to speak he did not have a problem letting them speak now. Councilmember Carnes stated that he would prefer to let them speak now so he could hear what people had to say before he makes any comments.

Mayor MacDougall announced that those who signed up to speak regarding New Business #1 (*Ratification of Emergency Ordinance #8 Requiring Individuals to Wear Face Coverings*) would be called on one at a time and speakers should state their name and address for the record and they would be limited to three minutes.

Ms. Rebekah Godfrey, 125 Hunters Trail, Lexington, thanked the Council for having her at the meeting tonight. She requested that Council not ratify the most recent 60 day mask mandate. She wished to compare it to the H1N1 ten years ago which had 60 million cases and we only have 6 million cases in the entire United States right now. She asked when did Council do masks for the last pandemic. Ms. Godfrey stated that a week ago the CDC said in Lexington County that only 6% of COVID deaths were solely due to COVID and no other conditions. She added that in Lexington County we have had 144 deaths, so if we take 6% that were solely due to COVID that makes 9 deaths in Lexington County. She stated that was not just in the Town of Lexington, it was for the whole county and she could not find the figure for the number of deaths just in the Town. She asked if we were going to have a mask mandate for the whole Town because of nine. She thought that was a little much. Ms. Godfrey stated that when she goes to the grocery store she walks in, is 6 feet away from everyone, stands on the stickers, is in and out and not touching anyone, not talking to anyone and she doesn't even look people in the eye anymore because she would have to stare at them to see who they are. She did not think the grocery stores are where we are spreading the germs because a droplet from her mouth infecting someone in the grocery store when she literally walks in and walks out is just not happening. Ms. Godfrey stated that her main point is masks do not stop the virus because the virus particles are smaller than what the mask can block. She stated that masks do stop some things in Town including friendliness, warmth, joy and trust. She added that everybody looks suspiciously at each other now, wondering if that person will infect

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you. Ms. Godfrey stated that it has ruined the feel of this entire Town. She added that unfortunately Council had successfully turned their citizens into fearful robots who are suspicious of everyone they see or into citizens who hate life because they have to go everywhere in a mask. She added that yet citizens still comply because there are so many good citizens in Lexington and it is either out of guilt or because they don't want any trouble or because they are tired of people or because they just want to be left alone and live their lives. Ms. Godfrey added that citizens will put on their masks, but they are sick of it and everyone she has talked to is tired of it. She added that it does not have to be this way. She had no problem letting people choose to wear a mask, but, please, let people choose to not wear a mask. She asked if it is such a small percentage that doesn't wear a mask, she did not think it would make that much of a difference. She added let them not wear a mask because we're all spread apart anyway in the stores. Ms. Godfrey stated that everyone in Lexington gave masks a chance for the first 60 day mandate, not to mention complying with the lockdown, social distancing and 15 days to slow the spread. She added that we've heard this preached to us for 175 days and the social experiment is over. She stated that we are done with being told what to do and having our rights tread on. Ms. Godfrey stated that she would never demand anyone else to keep herself safe and asked if Council would. She added that 60 days is too long already and 120 days is unconscionable.

Mayor MacDougall thanked Ms. Godfrey and called on the next speaker, Ms. Sarah Grace Allen.

Ms. Sarah Grace Allen, 105 Turnberry Lane, Lexington, stated that she was originally told she would have five minutes to speak so if she ran a few minutes over she just had a few points to go over. She wished to share some data regarding COVID-19 as well as state her concerns regarding the extension of the Emergency Mask Ordinance for the Town of Lexington. Ms. Allen stated that as she had told Council in her email, only 6% of total confirmed coronavirus deaths in the United States were solely from COVID-19 while the remaining percentage had two to three other causes – that is only .0002% mortality for the country. She added that as of September 5, 2020 in South Carolina we have had 2,877 deaths and our state's population is 5,148,714, therefore the chance of death from COVID, not including comorbidities or age, is only .005%. She asked if this virus is real – of course and are the deaths related to this virus tragic – obviously, but using guilt and manipulation in the form of spurious and inaccurate data is not a transparent means in which to govern. Ms. Allen stated that if a government wishes to place restrictions on its citizens for the good of their health, they would do far better in banning alcohol, cigarettes and sugar, the three of which are the leading causes of the comorbidities linked to the coronavirus deaths, rather than

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restricting our right to freely breathe. She stated that the country of Denmark never enforced masks upon its people and yet boasts one of the lowest COVID-19 death rates in the world. Ms. Allen stated that according to figures from John Hopkins University, as of August 4, 2020 the Danes have suffered 616 COVID deaths and that number is less than one-third of those who die from pneumonia and influenza in a given year. Likewise, Sweden has never enforced lockdown, social distancing or masks during the entirety of this pandemic. Ms. Allen added that one would assume their death toll would have skyrocketed, however, Sweden's deaths per 100,000 in the first 33 weeks of the year ranges from 528 to 593 deaths between the years 2015 to 2019. She stated that the death toll in the first 33 weeks of 2020 – only 588. Who knew that Sweden and Denmark would provide greater health and freedom for its people over our very own Town of Lexington, South Carolina? Ms. Allen stated that an article from the New York Times revealed that most test cycles above 35 for viruses are too sensitive and, therefore, inaccurate. The cycles implemented for coronavirus tests – 37 to 40. According to Dr. Michael Mina, an Epidemiologist in the Harvard T. H. Chan School of Public Health, said “tests with thresholds so high may detect, not just live virus, but also genetic fragments and leftovers from infections that pose no particular risks, akin to finding a hair in a room long after the person has left. She stated that Juliet Morrison, Urologist from the University of California, confirmed that thresholds above 35 test cycles are far too sensitive stating that she was shocked that people would think 40 could represent a positive. Even the CDC's own calculations suggest that it is extremely difficult to detect a live virus in a sample of a threshold of 33 cycles. Ms. Allen stated that as you can see, COVID tests in and of themselves are highly inaccurate. Furthermore, testing has been proven to be dishonest with patients from cancelled appointments being automatically documented as positives. She added there was a story in Memphis where a woman received a letter confirming her as a COVID positive case even though she had never even taken a test and had been dead for seven months. Ms. Allen stated that as far as masks are concerned, there have been zero studies which prove their efficacy. Over the years medical literature and studies in several medical journals such as the Journal of the Royal Society of Medicine has confirmed that in controlled case studies, environments with staff wearing masks were in most cases equally, and sometimes more so, contaminated compared to those without masks. She added that as simply an extra precaution, surgeons wear a mask to prevent droplets from contaminating the surgical field and exposed tissue of the patients and to prevent splash back of bodily fluids from contacting the surgeon.

Mayor MacDougall advised Ms. Allen that her time was up, but he would let her continue.

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Ms. Allen concluded that doctors routinely change their masks typically every 90 minutes and only wear them in the climate controlled environment of the operating room which helps prevent the negative side effects from wearing masks. She added that studies confirm that masks do not prevent viral transmission and if that were the case, mask mandates would have been issued during H1N1 and SARS outbreak and certainly every flu season. Ms. Allen stated that the World Health CDC confirmed that healthy asymptomatic people cannot spread COVID-19. On the contrary, forcing healthy members of the population to wear a mask for extended periods of time not only weakened their immune system but also causes severe adverse effects. She added that doctors are seeing a rise in cases due to skin sensitivity, acne, tooth decay, lung conditions, throat infections and pulmonary disease. Ms. Allen stated that extended mask wearing also cause an increase in anxiety which in turn lowers the body store of vitamin A, which is one of the most crucial aids of defense for enhancing immune function. In short, the physical, mental and emotional detriment associated with enforced mask mandates are far worse than any perceived benefit and this is now medical fact. She humbly ask Council to rethink and rescind this mandatory mask ordinance for the mental and physical health and well-being of the people of Lexington. She asked Council to support facts over fear.

Mayor MacDougall thanked Ms. Allen. He advised Ms. Godfrey that since he let Ms. Allen speak longer, he welcomed her back if she had anything further to say.

(continue) **Ms. Rebekah Godfrey** thanked the Mayor for the additional time and stated that masks are just not necessary for our Town. She added that with the grocery stores especially, we are still all touching everything at the same time. She stated that she was touching the freezer door to get the ice cream, touching all the buttons on the thing, touching the grocery cart and the grocery lady is touching her stuff and every 500 other people's stuff that comes through there that day. She stated that if this virus was so deadly all of us would have it. Ms. Godfrey stated that the survival rate is 99.96% and we're still all touching the same things and yet we are all still here and the survival rate is great. She added that those who still want to wear a mask, they are more than welcome to wear a mask. She would never tell anyone to not wear a mask, but she did not want anyone telling her to wear a mask. Ms. Godfrey stated that in this day and age people have Amazon, grocery food pickup, work from home, but don't penalize those who want to get back to normal. In closing she restated that 120 days is way too long.

Mayor MacDougall thanked Ms. Godfrey and called on the next speaker, Mr. Larry Baker.

Mr. Larry Baker, 113 Point Drive, Lexington, advised Mayor MacDougall that he did not have anything further to add.

Mayor MacDougall asked if anyone else from the public wished to speak. There were none. Mayor MacDougall stated that there was a motion and a second on the floor. He asked if there were any further comments from Council.

Councilmember Carnes thanked the Mayor for allowing the public to comment before a vote was taken. He stated that he opposed the ordinance the first time and he opposed it this time as well. He wanted to articulate the fact that civil public debate is the bedrock of democracy, never anything to be feared, and once it is diminished or pushed aside, then democracy begins to crumble. Councilmember Carnes stated that we should have civil public debate on issues like this because that's what helps us find the truth. He added that without that, one side shouts real loud and the other side is shouted down and we never really get to that middle ground, which is often where the truth lies. He stated that he certainly appreciated everyone being here and he appreciated the debate, which has been very divisive and now there are people in stores and there's anger about masking and non-masking. He added that should not be the case when we live in a great town like Lexington. Councilmember Carnes stated that we should be able to come to Town Hall and talk about it and figure it out and move forward. He wanted everyone in Lexington to understand that the reason he opposed this is not because he is a public health official and determined that masking does not work, that was not his reason. He stated his reason for opposing it is because, as somebody who understands statistics and how science works, the data is ambiguous. It's just not clear and government has significant power over the lives of its citizens and, therefore, government should never exercise its very significant power that it has over the lives of citizens unless government has absolute clarity about what it is doing. Councilmember Carnes stated that in this instance they could argue facts back and forth, but none of them are public health officials and the reality is that the issue of mandated public masking has been studied for decades now that in most of our hospitals they did not even require universal masking in our hospital facilities until sometime this spring. He added that we went through many other pandemics without it that historically there has never been a randomized study with quantifiable results that would prove this is beneficial. He added that the data that is out there is clearly ambiguous. He stated that Spain has a national mask mandate and he knew that DHEC came out with some stats about our state, but our mandates are so gerrymandered that there is no way to get quantifiable data about that which is randomized. He gave Spain as an example which has a national mandate and they had one bell curve that went down at the bottom of the curve, they instituted a mandate and it's back up. Councilmember Carnes

stated that he is not against masking and he is not for masking and the only thing he opposes is that he opposes government overreach when they are instituting legislation based on what he feels is data that is still ambiguous and will certainly clear up in three, six or nine months as these types of randomized studies quantifiable results are done, accomplished, peer-reviewed and measured.

Mayor MacDougall stated that he would like to share a couple things with everyone. He wished to read a statement that he received from Mr. Tod Augsburger, President and CEO Lexington Medical Center, which read as follows: *“Please express my appreciation and respect to the Council for their leadership and efforts to keep the Town and the entire community safe. Unfortunately, the pandemic is far from over and we need everyone’s help to stay vigilant and help us keep fighting. We don’t walk off the field at halftime when we are winning, we stick to the game plan and keep doing what is working.”* Mayor MacDougall added that he also has a statement from Dr. Gregory Little, Ed.D, Superintendent, Lexington School District One, and as we all know school just started back a little over a week ago. Dr. Little could not be present tonight because they were opening up their first sporting event and he wanted to be there and be part of that event and to make sure everyone was doing the right thing at the sporting event, plus it was River Bluff High School going against Lexington High School so he had to be there. Dr. Little’s letter read as follows: *“I’d like to commend city leadership for your willingness to institute a mask ordinance for Lexington as we have worked with local infectious disease specialists on our re-entry plans and wearing a mask was the number one mitigation factor in slowing the spread of COVID-19. From them masks were not negotiable as we looked to reopen schools. The safety measures we are taking in our schools will not be enough by themselves. If we are serious about opening schools, face to face for five days a week, we must do all we can to slow the spread throughout our community. This cannot be done by the school district alone. It will require all of us working together. Our district is great because we have such a supportive community. Wearing a mask is the ultimate show of support because it will not only allow us to open, but to stay open. In addition, wearing a mask shows that we care about the health and safety of our neighbors and that we are willing to take care of each other. All of our plans for safety are impacted when a student and staff leave campus to be exposed when a simple act of wearing a mask would minimize their risk. As our Town contemplates future decisions about wearing masks, I ask you to continue to consider the needs of children who depend upon the schools being open for food, working parents who want a safe place for their children to learn during the day and business leaders who rely on employees to provide valuable services. I also ask that you consider the expectations and demands of our community who desire a stable, rigorous educational experience that*

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prepares students to excel. This can only be accomplished when we all do our part by wearing a mask. Thank you for your leadership in these difficult times.” Mayor MacDougall asked if there were any additional comments from Council.

Councilmember Baker stated that before Council approved the first mask ordinance he polled three neighborhoods and came up with overwhelming support for a requirement. He added that before Council completed this extension, he polled five neighborhoods with pages on Facebook and included Coventry and Mallard Lakes (share a page), Hawthorne, Cherokee Village, Wellesley and Settlers Point. Councilmember Baker reported the results of his poll: 223 support extending the requirement and 81 wished for the requirement to expire. He stated that resulted in a 73% support for extending it and 27% support for letting it expire. He added that Council’s vote was five to two which resulted in a 71.4% support for the extension (five out of seven) and 28.6% support to end the requirement (two out of seven). He wished to point out that he felt the Town citizens were represented by how Council’s votes shook out. Councilmember Baker stated that he appreciated the citizens attending the meeting tonight and making their points be heard. He added that Council does welcome dialogue. Councilmember Baker agreed with Councilmember Carnes in that civil discourse is part of what makes a healthy community. He added that in spite of their differences and different opinions, we are in the community together. Councilmember Baker had additional statements that he wished to save for later, but he called for unity in our community and know that this is a contentious thing and he was appreciative of those who showed up tonight to express their opinions.

Mayor MacDougall asked if there were any additional comments from Council.

Councilmember Maness stated that Councilmembers had received many emails to keep the ordinance and many emails from those who wished to not extend the ordinance. She added that some emails they received showed that some people did not understand what the Town of Lexington’s mask ordinance does. She explained that it is for enclosed area of a grocery store, pharmacy, or other retail establishments which are open to the public. She stated that they received an email from a parent whose child has to wear a mask in school, but the Town does not have anything to do with masks being worn in schools because that decision is made by State Superintendent Molly Spearman. Councilmember Maness stated they received another email from a small business owner who did not want to wear masks in her business and after further research she found that particular business was one that did not have anything to do with the mask ordinance. Councilmember Maness stated that she was

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glad to provide that information to the business owner. She added that another business owner sent an email and expressed their disappointment in extending the emergency ordinance. She indicated that it really bothered her that the business owner stated that COVID-19 was a media hype and politicized virus. Councilmember Maness stated that the business owner's comment really hit her wrong because one of her good friends lost her husband last week to COVID-19 and this past weekend a 30 year old teacher in Richland County died due to COVID-19. Councilmember Maness assured citizens that her vote tonight is not political, it's because she wants to slow the spread, she wants her child in school five days a week and the only way to do it is to stop the spread. She added in that same email the business owner commented about only being able to have 50% capacity and that they have to wear masks. Councilmember Maness stated that has nothing to do with the Town of Lexington. She added that restaurants in the Town have nothing to do with the Town's ordinance because an emergency ordinance was done by the Governor, Executive Order #2020 #50, which states in Section 3, *"restaurants shall require that all employees, customers, patron suppliers, vendors and other visitors wear face coverings"*. She explained again that was done by the Governor, not the Town of Lexington. She added that also in Section 3 it states *"restaurants shall not permit the number of customers and patrons that receive an in-door dine-in service on the restaurant's premises at any given time to exceed 50%"*. Councilmember Maness stated that nowhere in the Town of Lexington's ordinance does it address 50% in restaurants because that was done by the Governor in his Executive Order. She added that it was concerning that some people mistook what the Town did for what the Governor did. Councilmember Maness stated that on August 12, 2020 Dr. Linda Bell, DHEC State Epidemiologist, said that the South Carolina Department of Health and Environmental Control released new data that indicates that local mask ordinances are helping to slow the spread of COVID-19. She asked if everyone watched the Governor when he speaks, because Dr. Bell is always right there with him. She added that the new data shows what we already knew and states that *"wearing face masks works and we are strongly supportive of those local leaders' initiatives that are centered on protecting the health and well-being of our communities"*. Councilmember Maness stated that is what is important to her, the health and well-being of the citizens in the Town of Lexington, all over South Carolina and throughout the country. She added that on August 25, 2020 SCDHEC shared updated data that shows communities with mask requirement ordinances in place continue to see a slower rate of disease spread compared to communities without mask requirements and the data continues to reinforce what we've already known about proper wearing of masks and their success in helping to stop the spread of this deadly virus. Councilmember Maness stated that is what she wants to do – stop the spread of the virus.

Mayor MacDougall asked if there were any additional comments from Council.

Councilmember Williams asked if the Town had written any citations on this order. Town Administrator Poole responded, no. Councilmember Williams stated that he met with Dr. Little, Superintendent Lexington School District One, at great length and they discussed how this affected the kids. Councilmember Williams added that he mentors children at the school and knows how many kids receive food bags for the weekend so they would have food to eat. He stated that Dr. Little's answer to him was fairly blunt when he explained that if the high school has one person with COVID, 33 go home and if one elementary student has to go home because of COVID, the whole class has to go home which also results in those kids do not eat. He stated that he understands why they have to do it and they have to run the school, it is not up to the Town Council. Councilmember Williams stated that seeing the need for the kids to attend school, the need to be fed, the need to get their education when some of the kids do not have a good home life so they also need school just to have friends and some social interaction. He added that Ms. Godfrey had touched on some of these issues including psychological issues. He dealt with a young man last week that was just ready to go back to school and to see his friends. He added that Dr. Bell's statement was that we need to do this for about six more weeks and he agreed to do the ordinance if it included the contingency that the mask ordinance would end when we get the numbers back down to a low category. Councilmember Williams stated that the ordinance could reinstate if the numbers go back to high. He was hopeful the numbers would go to low because he would rather see the kids at school being able to play without a mask on. He added that he knows a school principal that bought balls for the kids but he can't give them to the kids because they can't even play kickball right now. Councilmember Williams stated that Councilmember Maness had mentioned all the emails received by Council fussing about restaurants, but Town Council did not do that ordinance. He added that they were trying to address big box stores and some of those stores already have mask requirements in place anyway. He hoped that everyone could do what they have to do to get the numbers back to the low bracket and then we can stop wearing masks.

Mayor MacDougall asked if there were any additional comments from Council.

Councilmember Carnes wished to emphasis again that this is a scenario where good men and women disagree. He appreciated the remarks from the School District One's Superintendent who he spoke with as well and

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the CEO at Lexington Medical Center. Councilmember Carnes stated that he was very frustrated with the statements by SCDHEC because statements were made but no data points were released. He stated that he was not a public health official or a medical person, but he was an engineer and was pretty good with data and he would like to see the data points from SCDHEC. Councilmember Carnes added that our state is so gerrymandered as far as the actual mandates, so to look at a real sample size you have to look at countries or states that have mandates that are uniform. He stated that may very well be the case, but he did not know. Councilmember Carnes commended Councilmember Baker on his points and who did all the legwork to get out and poll the neighborhoods. He also wished to emphasize the fact that often times, and probably more often than not, the role of government is to protect the liberty and voice of the minority, not just to exert the will of the majority. He added that they do need to know what the Town citizens are thinking about because most of our liberties and freedoms, such as freedom of speech, freedom of assembly and these types of things, when they're generally brought before a governmental body, it's generally there to protect the liberties of the minority. Councilmember Carnes stated that is a delicate path we have to walk to respect the wishes of the majority and protect the minority, so again, this is a tough, tough issue and it is passed for another 60 days. He thought the American people want significantly more data released and have been frustrated with some of the data that has been released because much of it has been maligned.

Mayor MacDougall asked if there were any additional comments from Council.

Mayor Pro-Tem Livingston thanked the citizens for attending the meeting tonight and she had talked to one of them and received emails from some others. She heard from a lot of people that wanted the mask ordinance to stay in place. She had a great conversation with Ms. Allen and they would just have to agree to disagree on this one. Mayor Pro-Tem Livingston stated that she heard a lot from both sides, but she based her decision on talking to the health officials that would be treating us and treating our families and our hospital and their needs especially with the flu season coming up which creates a twin-pandemic or double whammy and having enough beds. She added that none of them in the room are health officials and or have the exact data because it changes daily because it was six feet apart, then it moved to 10 feet apart. She stated that she had to respect the hospital and their need in what they were asking for. Mayor Pro-Tem Livingston stated that it was not an easy decision and, unfortunately, she would probably be judged like a lot of other Councilmembers based on this one decision when she has 23 years of service that she has given to this Town, which is way more than just this one decision, because the audience is not sitting in this seat and

it's not an easy decision to make. She added that the decision will affect the person who wants it and the person who does not want it. She stated that the main thing is looking at the best information you have and respecting the person that will be doing it. Mayor Pro-Tem Livingston stated that one of the final decisions for her was talking to a doctor that has been on the COVID floor the whole time and what they are seeing and what they are treating. She added that her decision came with the fact that those people who died with related illnesses were still someone's mama, grandmother or sister and COVID is probably what pushed it over the edge. She felt like she had to make the decision in support of our health care system and what they were asking for and move forward. She assured the citizens that her decision was not out of disrespect for their thoughts, because she heard them, but she had to go with the health care system. She hoped that people understood that the Town's ordinance does not affect the restaurants.

There being no further comments from Council, Mayor MacDougall call for the vote to the motion made by Councilmember Maness and seconded by Councilmember Baker for the ratification of the Emergency Ordinance #8 phone poll vote. The motion carried with a vote of five (5) in favor and one (1) opposed (Carnes) (Lyle absent).

2. **First Reading of an Ordinance to Sell Right of Way Property for the Dreher Street Crossroads Improvement Project:** A sale of Town property is necessary to support a Right of Way for Dominion Energy to relocate power lines as part of the Dreher Street Crossroads Improvement Project. (A copy of the plat and appraisal are attached.)

A motion was made by Councilmember Carnes and seconded by Councilmember Williams to approve First Reading of an Ordinance to Sell Right of Way property for the Dreher Street Crossroads Improvement Project as stated. The motion was unanimously carried by all those present.

3. **First Reading of an Ordinance Annexing Lexington County Tax Map #4332-02-002 Located at 504 Northwood Road:** Derek and Emily Berry own a parcel located at 504 Northwood Road and petitioned to annex the property. A single family home is located on the site. Properties in Town near this property are zoned Protected Residential and this portion of Northwood Road is classified as an RL-4 Road. The Planning Commission will review this annexation during their next meeting to recommend a zoning and road classification for this parcel. (Copy attached.)

A motion was made by Councilmember Baker and seconded by Councilmember Williams to approve First Reading of an Ordinance

annexing Lexington County Tax Map #4332-02-002 located at 504 Northwood Road as stated. The motion was unanimously carried by all those present.

4. **Resolution Supporting Hate Crime Legislation:** South Carolina is one of only three states in the country without a Hate Crime Law. A Resolution supporting the passage of such a law was presented and to be considered by Town Council. (Copy attached.)

A motion was made by Councilmember Williams and seconded by Councilmember Baker to approve the Resolution supporting Hate Crime Legislation as stated.

Councilmember Carnes wished to briefly state that this is a broad overarching statement and he did take a little time to read some of the bills that had been filed with the legislature. He did not think this relates to any particular bill, but some of the bills that had been filed are things that he certainly could not support, so in a broad generalization like this it is a little tenuous about supporting something that is not defined. He would say that the hate crimes legislation in the right way could be something that is beneficial, but in the wrong way we begin to prosecute thoughts and generate thought police and this is always a road we do not want to go down because we want to protect people's thoughts and their speech, but we want to prosecute crime, especially hate crimes to the fullest extent of the law. Councilmember Carnes added that it is a very complicated issue and he wanted to go on the record saying that whereas this is a very broad statement, which he can certainly support, but with that qualification.

There being no further comments from Council, Mayor MacDougall called for the vote on the motion to approve the Resolution supporting Hate Crime Legislation as stated. The motion was unanimously carried by all those present.

Mayor MacDougall was asked to call a five minute recess prior to addressing the next two items. Council reconvened the Council meeting at 7:42 p.m.

5. **Appeal of Impact Fee Assessment – Carolina Career School:** *Appeal Process:* Before moving into the next two items, Town Administrator Poole wished to explain the process for appealing an Impact Fee since this was the first appeal to be brought before Council following approval of the Ordinance in December 2019. The way the Ordinance is written, it allows an appeal to Council for anyone that feels they should appeal the impact fee. In addition, each party is given ten (10) minutes and then the appellant is given ten (10) minutes to state the appeal. Council uses this as a time to take in facts and

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information only and then Council will have an item on their next Regular Meeting agenda to render a verdict. Mr. Poole stated that this is a quasi-judicial process so Council will hear the information now and then determine how they want to vote by the next Council meeting. He asked if there were any questions about the process. There were none.

Carolina Career School (605 Northwood Road): Town Administrator Poole stated that the owners of Carolina Career School wished to appeal Town Staff's Impact Fee assessment and the amount of the impact fee charged to the appellants is at question. He added that the procedure for appeals to Town Council is for Staff to present its case to the Town Council and for the applicant (appellant) to be allowed to respond. Mr. Poole stated that Dr. Frank Hines operated a dental practice at this location until he retired and his last business license expired on April 30, 2019. Mr. Poole added that the dates are important because when Council adopted the Impact Fee, December 2, 2019 which was set as the defining date of use. The date of use means whatever a building was being used as on the day the Impact Fee Ordinance was passed, that was the determined use for that building and any use since then would become that use. He gave the example if it was an empty lot and became a car dealership, the car dealership would be the greatest use if it. A second example was if the location was a restaurant on the day the Ordinance went into effect, then the greatest use of that location was the restaurant use. Mr. Poole explained that on the day the Impact Fee Ordinance went into effect there was not an operating business at 605 Northwood Road. He stated that Lexington County records show that Pinnacle Property Solutions purchased the property on October 31, 2019 which was a couple months before the Impact Fee went into effect. Dr. Hines informed the Town's Customer Service to disconnect the water on November 1, 2019, therefore the Town knew for sure it was not an occupied use after November 1, 2019 even though even though the business license had expired on April 30, 2019. Mr. Poole stated that on or about November 6, 2019 PPS (Pinnacle Property Solutions) attempted to have the water turned back on and applied for a business license for a property management company. He explained that it was a business license that someone would get to lease the business and it was the Town's understanding that they intended to lease the building to someone else. The business license request that was submitted had a Post Office address that was not that business and a mailing address of 285 Pope Lane. Mr. Poole stated that Council would hear from Ms. April Mills tonight and she was listed as the contact on the business license request. The Town did issue the business license on November 7, 2019 and it was mailed to 285 Pope Lane. Mr. Poole added that no business location permit was applied for or issued for Dr. Hines closed dental practice at 605 Northwood Road until February 2020 which was about three months after the cutoff date of December 2, 2019. On February 21, 2020 Ms. Mills submitted a business license location permit application for the Carolina Career School. Mr. Poole stated that the Impact Fee Ordinance, Section 9.11 (Special Cases) states "*any claim of existing or previous use must be made no later than the time for application of a building permit. Any claim made after*

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such time shall be deemed invalid.” He added that due to the fact that no permanent or licensed business was operating at this location on December 2, 2019 an impact fee for the Carolina Career School was assessed and the fee was based on the fee schedule which is included in the Ordinance. Mr. Poole stated that the bill described the Carolina Career School as an adult career school, which was based on Ms. Mills’ application. Based on that description the fee for a *junior community college* was utilized and the total fee for this type of use is \$1,889 per thousand square feet which yielded a total impact fee of \$4,546.56 based on the building being 2,560 square feet. Mr. Poole stated that these are the facts as the Town sees it. He asked Council if they had any questions.

Councilmember Baker confirmed that Council was hearing an appeal for the total impact fee of \$4,546.56.

Councilmember Williams asked for the date when the Planning Commission first reviewed the Impact Fee. Mr. Poole responded that he was not sure of the exact date, but it was approximately nine months before there were discussions. He added that there were discussions before that but Council sent it to the Planning Commission and originally gave them six months to make a recommendations but approximately three months were added for them to complete their review. He stated that Council had it on their agenda a few months before the December date which would have pushed it back into 2018.

Mayor MacDougall called on the co-owners of Carolina Career School. He confirmed that Council received a copy of their letter tonight. (Copy attached.)

Ms. April Mills and Ms. Jennifer Toole, Co-Owners, Carolina Career School and Training Institute: Ms. Mills stated that they would like to request a reconsideration of the Town of Lexington’s impact fee. They understand that this fee was put into place due to increased population and traffic complaints in Lexington. They now know it was put into place in December 2019, because they thought it was February 2020. She stated that in November, three months prior, they were budgeting, planning and looking for a location while they were doing a discovery and waiting for their State licensing. They met with a Town Representative, Ms. Sonya Lee, in November to discuss all the fees and to find out how much the business license fee and the permit fee would cost. Ms. Mills stated that at no time during that meeting were impact fees discussed. She stated that they received the business application to complete and bring back when they came in and spoke to Ms. Lee. She added that unfortunately they could not do that because they were waiting on the other paperwork and that was one of the forms they needed to complete and turn in their application. Ms. Mills stated that they first learned about the impact fee when they came in February and were told it was approximately \$3,600. A few days later they heard there was an increase in the fee to \$4,500 because of the square footage and type of business because it is a new type of business and they couldn’t figure it out. She confirmed that the facility is about 2,000 square feet and it is set up as an

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orthodontics office. The set up was great for them because it has an open bay making it great for teaching students. Ms. Mills stated that if an orthodontist would have been the one who rented the facility, based on some inquiries she made, they see anywhere from 60 to 90 patients a day. She stated that they see 10 students one day a week so there is a big difference from what they do compared to what they do. Ms. Mills stated that she and Ms. Toole have been residents of Lexington for over a decade and they are contributors to the Town of Lexington as consumers and business affiliate, they would like the same support shown to them. They feel as long time local residents of Lexington they should be able to provide services and build relationships in our community without penalty. Ms. Mills added that they both live in Lexington, have raised their children here and their daughters graduated from River Bluff High School. She added that they love Lexington and they want to do business in Lexington where they can be close to home. She stated that their mission as a small business is to provide superb service to a limited number of enrollments in order to provide quality education, training and leadership skills. They provide this opportunity to a maximum of 10 students per class. Classes during the week are on-line which enables the traffic to run as normal without any impact from their students. Their hands-on classes are held on Saturdays only from 9:00 a.m. to 5:00 p.m. In their establishment they do provide a break area for students so they do not feel like they have to leave during lunch. Ms. Mills stated that their license with the Commission on Higher Education is actually used as a different address because all of their videos were pre-recorded by a dentist, Dr. Kristen Reese, so they were already created and sent to them every Sunday and they do not use the office to create the videos. Ms. Mills stated that they would be happy to provide a roster of students to show the number of enrollments. She added that the two classes they have been able to hold in the Town of Lexington has been a total of 12 students with six students being in each class. Ms. Mills stated that these are uncertain times surrounding us these days so they have not been able to reach their goal of 10 students per class. This type of enrollment rate and class time cannot possibly affect such a population and traffic concerns for the Town that would justify such an impact fee. Ms. Mills added that when she printed the roster she was actually shocked by it because six of their 12 students are from and live in Lexington. She stated that for the last seven months they have impacted the traffic by six cars one day a week. She added that in addition to the fact that the Town of Lexington, the Chamber and Lexington businesses have had their full support over the past 10 years recent event over the COVID pandemic have crippled not only small businesses like theirs, but larger corporations such as Tuesday Morning and Stein Mart which are having to close completely down. Ms. Mills stated that they do not currently have the funds to do their day to day operations let alone for a fee to do business in our own town. They understand the reason, they live in Lexington and know what traffic is like, but it is just the two of them and they are not corporation or a franchise. She stated that they are just two women trying who are passionate about what they do to make leaders in the community and develop their skills. Ms. Mills added that they even cut their own grass at the school and do it all. She asked if Council

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would reconsider the fee because they did not feel they should be in the same category as someone else based on their numbers and the impact on traffic.

Ms. Jennifer Toole stated that she did not have anything to add. She and Ms. Mills prepared for the appeal together for the past week. Ms. Toole added that she respects it and understands it especially being a resident of Lexington because she gets frustrated at traffic too. She stated they are not coming in from Rock Hill or Columbia, they are coming from their own city. She did business in Lexington for years and owned a boutique, had other businesses, and has been a member of the Chamber and they just want the same support.

Mayor MacDougall called for questions from Council.

Councilmember Maness asked what classes were taught at the Carolina Career School. Ms. Mills responded that they teach dental assistants and recently they added phlebotomy tech, but they are not holding the class yet and with COVID it would be all on-line followed by an internship at a dental office.

Mayor MacDougall stated that since this is a fact finding process he asked if the Town knew that they only operated one day a week. Ms. Mills responded yes. She added that their original reaction was shock and disappointment so maybe communication was not clear. Ms. Toole stated that if it was implemented December 2, 2019, they came in to apply in November. Mayor MacDougall stated that it was passed during that time. Ms. Mills stated that Town Staff including Mr. Hanson, Mr. Poole and Ms. Lee were all wonderful and explained that the fee was new. Mayor MacDougall stated that he knew Ms. Lee would not intentionally leave something like that out. He added that the approval of the fee was a process and they had not approved it yet when they had their first conversation about applying, but Council had moved on a decision by their second conversation. Ms. Toole stated that they were told it had been in discussion for months prior to their application, they were just never notified. Ms. Mills added that if they had been notified, it would have made a big decision for them.

Councilmember Carnes congratulated Ms. Mills and Ms. Toole on their new business and for cutting their own grass. He added that is the entrepreneurial spirit. He wished them much success and added that there is a great market for that type of educational possibility for those that do not want to spend \$100,000 on a four year school. Councilmember Carnes asked Mr. Poole if there was any ambiguity for discretion related to their classification on the front end since it is some type of new model or is it very wooden and straight where they land in that scenario with such a small enrollment maximum. Mr. Poole responded that they did go through some learning curve to determine where to place their business, but he thought they were placed correctly now because it is essentially the same if it were a tech school. He added that there are a lot worse categories to be in so it is not a bad thing to be in that category. Mr. Poole stated that the number of

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times they use it is not really a factor in the calculation using the ordinance because the ordinance assumes that you may use it one day now, but there could be a big drive to increase enrollment next year. He explained that it is one time to the well sort of thing and it is assigned a use and it doesn't matter if that use is one time a week or seven times a week.

Mayor MacDougall thanked Ms. Mills and Ms. Toole for attending the Council meeting and stated that Council would take this under advisement and would take it up at Council's next meeting. He added that they would be notified when it would be addressed.

6. **Appeal of Impact Fee Assessment – Sonic Drive-In Restaurant:** Town Administrator Poole stated that this appeal is regarding the Sonic Drive-In currently located at 312 Columbia Avenue and proposing to relocate to 461 Columbia Avenue which was the previous location of a Bojangles restaurant and next to Firestone Tires. Mr. Poole stated that the owner of Sonic wished to appeal Town Staff's Impact Fee assessment and the amount of the impact fee charged to the appellant is at question. He added that the procedure for appeals to Town Council is for Staff to present its case to Town Council and for the applicant (appellant) to be allowed to respond. Mr. Poole distributed a copy of the letter requesting the appeal from Mr. Robert F. Fuller, attorney for the applicant. (Copy attached.) Mr. Poole explained that this is a similar situation in that the proposed location was previously a fast food restaurant, but in this case it had been closed for a number of years. He stated that on July 15, 2020 they had a predevelopment meeting while Sonic was looking to move to the new location. It was most recently occupied as Bojangles and discontinued operations in 2017. Mr. Poole explained that the Impact Fee Ordinance, Section 9.11 (Special Cases) specifically states *"In the case of relocating an existing land use, development impact fees shall be assessed to the relocated use of its new location. Future redevelopment of the old location from which the use was removed will receive a credit against development impact fees assessed equal to the impact fees that would have been assessed against the relocated use. Credits shall not be transferable to the new location"*. Mr. Poole stated that the ordinance is very specific that credits cannot be transferred and it is similar to the Town's CCF rules which the Town has had for a number of years and in a way it is impact fees for water and sewer utilities. Mr. Poole added that CCF's are not allowed to be transferred as credits from location to location and are physically tied to the site. Mr. Poole stated that with regard to the new location the ordinance states that *"any claim of existing or previous use must be made no later than the time for application of a building permit"*. Mr. Poole added that we are not to that point yet. He stated that the ordinance also states that due to the fact that the use is being relocated and no permit or licensed business was operating at the proposed new location the ordinance that was adopted would have Sonic pay the impact fee assessed at the new location, when it ultimately moves and closes the old location. He stated that the impact fee was calculated on a 3,300 square feet building which was based on the existing building and they could theoretically petition to demo

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that building and have a larger impact fee if they built a larger building. Mr. Poole explained that the impact fee on the existing building would be \$70,926.90 as a fast food establishment which is amongst the highest categories for traffic generators and, therefore, amongst the highest categories for impact fees. He gave a breakdown of the fee: \$21,493 per 1,000 square feet with the vast majority of that, \$20,651 per thousand square feet, is allotted to the traffic impact fee. Mr. Poole stated that these are the facts as the Town sees it. He asked Council if they had any questions. There were none.

Mayor MacDougall called on Mr. Fuller, representing the applicant.

Mr. Robert F. Fuller, Attorney at Law, representing the applicant (Sonic), thanked the Mayor and Council for the opportunity to speak to them. He added that he is representing both the seller and the acquirer of this particular site, which is proposed to be the redevelopment of a now vacant Bojangles restaurant building to a Sonic Drive-In restaurant building. He stated that Sonic is presently active in Lexington across the highway from the site it proposes to go into. He stated that is important for a number of reasons and considerations that are applicable to the conversations he has had with the Town and here tonight and how it impacts the development at this site. Mr. Fuller stated that the memorandum that was passed to Council gives a background of the South Carolina Law on the development impact fee procedures that he would not go into in any detail tonight. He added that there is more in the memorandum and they could discuss those at a later date if necessary. Mr. Fuller stated that critical to this whole opportunity is an understanding that the South Carolina development impact fee law that permits the Town of Lexington to enact such an ordinance for itself is instructive in why this is done in the first instance, which then has to be correlated by Council to determine the impact on the Town, which includes in some measure, the impact on the proponent of the business opportunity. Mr. Fuller added that it impacts variously, just like the ladies that spoke previously, were impacted in a manner that was certainly consequential to them at \$1,400 or so and maybe \$4,500 in total as he did not remember the exact figures. Mr. Fuller stated that this is a larger project for Sonic, but it is a single restaurant location and the development impact fee that has been calculated for this site is \$73,000 plus or minus. He added that it is impactful. Mr. Fuller stated that South Carolina Law permits the enactment of an ordinance that says in applicable part that development is defined as construction or installation of a new building or structure or a change of use of a building structure any of which creates additional demand and need for public facilities. He added that it is designed to assist the municipality in providing support facilities for businesses that are opening that it must provide on the streetways for water and utility connections that deal with the operation of business in general, but affect more than just the site. Mr. Fuller stated that it cannot be ignored, and they submit to Council, that the site itself is bearing a tremendous amount of responsibility for something that may or may not take place in consequence in the location of this particular placement on the ground. He added that if this proposal passes, Sonic goes from across the street to

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refurbishment of an existing Bojangles location to start operating as Sonic in the new location. Mr. Fuller stated that the impact in this instance is more impactful on the business proponent than it is to the Town in reality. Mr. Fuller thought it would be helpful if Council would look in their consideration of this over the coming month between tonight and the vote date on the matter of this appeal. He asked Council to look at what is proposed and shown in the memorandum about how this all comes about and see if there is not some reasonable way that we can accommodate both the need for the Town and the need for the proponents of the sale and the purchase of the property to make a transaction work which will actually put business in place. Mr. Fuller stated that he was not going to go into all the nuances of what is important in the process, but in looking through the matters that created the ordinance in the first place. He added that there is a factor in there that would suggest that an impact fee that is imposed on a new development must be reasonable and rational under the State Statute. He added that what might be reasonable and rational may be different in the minds of those who propose it and those who are receiving it, but there's got to be a proportionate rationality to the fee that is being charged and the impact that is being absorbed the municipality, the county or the political subdivision that the ordinance derives from. Mr. Fuller stated that it is not an inconsequential matter, it is a deal breaking kind of fee when it is put in the context of any given transaction. So it is not just a subjective enterprise or exercise in how government can work, it is an actual real payment in money that has got to be put into the system, recognizing that the system has to perform certain services that it is supposed to be responsive to, but it is a consequential piece of business. He quoted that credits shall not be transferable to the new location or a transferring business. Mr. Fuller stated that this impact that would come to the restorer of the now defunct building on site is going to have to pay the consequence of this entire fee. He added that there is no real court challenge to South Carolina Impact Fee Ordinance or State Law that has been found to be efficacious in the state, but in the enactment of the ordinances and the implementation of them across the state. Mr. Fuller stated that it has been determined that the fee is not appropriate to be imposed on a project which does not create an additional demand and need for public facilities. He added that is a tricky term and not easily defined in objective terms, but to define how much impact the opening of a Sonic restaurant on one side of the road by relocating it from the other side of the road has a significant significance when the dollars and cents of it means for one restaurant location that there's an additional \$73,000 plus fee attached to the front end of the operation. Mr. Fuller stated that they think that needs to be looked at as to whether its impact is rational and reasonable under the guidance that is provided by the State Statute for its enactment in the first place and the implementation of it for the benefit of the Town and the citizens that will rely on it. He stated that the suggestion they would make here is that in reality there's not going to be any creation of additional demand or at least no significant additional demand by the relocation of an existing business to the other side of the road. He added that they may make some improvements and hopefully it will uptick the marketing a little bit, but the impact fee is so consequential it almost frustrates the opportunity to even look at

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the prospect of opening the business. Mr. Fuller asked Council if they would consider during their deliberations over the next number of days that you are looking at it, they think it is reasonable to look at this as if looking for a rational nexus or a reasonable relationship between the required dedication and the impact of the proposed development. He added that there's got to be some proportionate rationality to the proposed fee and to what the governmental responsibility is in the charging of it. Mr. Fuller stated that it is a subjective thing but the formula is complex. He stated that they do not charge Mr. Poole and his people with any excessive or abusive undertaking in coming up with the numbers, but the impact is the responsibility of the Council in enacting the legislation and it is going to be something that is counterproductive to the development of business properties in the Town of Lexington. In closing, Mr. Fuller would say that the rough proportionality rule, the nexus of a rational proportional relationship between the amount of the fee and what's to be accomplished by it is not simply a mathematical equation to a point, but it is required that the conditioning body make some sort of individualized determination to be compelled out of this process and is related in nature and extent to the impact of the project itself. He added that it is a single restaurant location, hopefully a good one and a very successful one that could pay the fee without even blinking, but that's not the reality world. Mr. Fuller stated that they were asking for a consideration that would give some relief in extraordinary circumstance because that is quite a piece of the property value itself. He stated that he would close by simply saying that we don't think there is really a rational nexus between what this projected fee comes out to be and what is necessary under the performance of an ordinance to accomplish the same sort of purpose. Mr. Fuller added that this \$73,000 fee is within a couple thousand dollars of the maximum amount of the impact fee that can be charged under the ordinance. He added that this is by no means the largest transaction that takes place in Lexington city or county in which the impact fee will be taken into consideration, but it is a whale of a big investment on the front end for a small business operation, whether you consider Sonic to be a small business or a larger business, it is not large in context of really large. Mr. Fuller stated that this fee is about as much as you have to pay in Lexington County regardless of what business you are intending to do. Mr. Fuller stated that they were urging Council to give consideration to this plea in your deliberations during the coming weeks and see if we cannot, because they are perfectly willing to consider with the Town and its Staff, who have been good to work with, to see what can be done realistically and rationally to enable the Town to collect a development fee.

Mayor MacDougall thanked Mr. Fuller and asked for questions from Council.

Councilmember Carnes asked for clarification, which he stated may not be relevant at this point, what is the current footprint of Sonic as it sits. He thought the new building is around 3,000 square feet. Mr. Fuller responded that he did not have that information, but he could get it. He added that his recollection is that it is in the neighborhood of 2,200 square feet or slightly more. Mr. Fuller stated that

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the Bojangles' building is a larger building and he did not know the exact footage of it. Councilmember Carnes stated that he would be interested in that number. He asked if a franchisee was running this Sonic. Mr. Fuller responded that he could not tell him all about it, but he could tell him that the Sonics in this general area are operated generally by BOOM, Inc. which is a business operation of Mike Irons who owns Sonics in Lexington and others in Columbia. He added that it is a franchise business in the sense that there is an overarching corporation, but this is not a single fruit stand with no other connections to the industry. Mayor MacDougall stated that it was his understanding that this Sonic is one of three and there is one in Red Bank White Knoll area and one that just opened near Lexington High School and they are owned. Councilmember Carnes stated that he is on a fact finding mission and his questions may or may not be germane to what they are doing. He asked if this Sonic is in the context of a lease of this property. Mr. Fuller responded it was a purchase.

Mayor MacDougall asked if there were any further questions from Council. There were none. He thanked Mr. Fuller for attending the meeting. He added that they would take the information under consideration and both appeals would be on Council's October 5, 2020 agenda.

ANNOUNCEMENTS

Councilmember Maness made the following announcements: (1) Census Update: Census data is very important to all municipalities. It ensures fair representation at all levels of government; it impacts the funding received by municipalities over the next decade; and it provides reliable data for research and planning for public and private sections. The National League of Cities has a great web page on the Census at census.nlc.org or you can go to 2020census.gov. The time line for enumeration has been extended to October 31st. You can respond on-line or by mail. Non-responders will receive a visit during September from a certified Census worker. Please get counted if you live in the Town of Lexington. The National response is currently 65.3%. The State of South Carolina's response is 59.3%. The County of Lexington's response is 66.4% AND the Town of Lexington's response is 72.3%. So we are doing great, but we need everyone to respond. (2) The Market at Icehouse will be wrapping up soon! The Market will end on September 26th and everyone was encouraged to attend the next 3 Saturdays from 9:00 to 12:00. There are over 25 vendors each Saturday. Extra precautions are taken to ensure your safety and to encourage social distancing. Also, if you would like to be a vendor email market@lexsc.com. (3) The Town has had a great turnout for our Movie Series at River Bluff High School. This Saturday the movie is "Karate Kid". Gates open at 7:30 p.m. and the movie will start at 8:30 p.m. The next movie will be on September 26th featuring "Footloose". (4) Council returns to their regular schedule this month and will meet again for the Council Work Session on September 21st at 6:00 p.m. in the Eli Mack Room. (5) The Planning Commission will meet this month on September 23rd at 8:00 a.m. in the Council Chambers. (6) Board Training will start again on September 25th at 2:00 in the third floor conference room.

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Councilmember Maness thanked all the Board members who volunteer on various Town Boards and Commissions. There are also additional openings. Citizens may go to the Town's web site to get an application. (7) Councilmember Maness wished a Happy Birthday to Councilmember Todd Carnes on September 28th! (8) On behalf of the Mayor and Councilmembers and Staff, condolences were expressed in the recent death of Mayor Pro-Tem Zebbie Goudelock. Zebbie served on Newberry City Council for 30 years. Mayor MacDougall also served with him on the Central Midlands Council of Government. He will be missed by so many, not only in Newberry, but across the state. Councilmember Maness thanked everyone for watching their Town Council in action tonight.

Mayor MacDougall asked if there were any other comments or announcements from Council.

Councilmember Baker stated that he would like to read a prepared statement. He wished everyone a good evening and stated that he would like to address folks on both sides of the mask issue, those for a mask requirement and those opposed and any and all folks in our community affected by this pandemic. To do so, he wished to provide the appropriate context and he wanted to relive some trials and unity our state and nation has lived through. Only five years ago we experienced the shooting at the Mother Emanuel Church in July and then in October the 1,000 year floods. Now in 2020, the whole world has been rocked by the COVID-19 pandemic. He asked what have we learned that we can apply now. It was July 2015 when his mother-in-law came to visit his family, a few days after the Mother Emanuel shooting. After picking her up from the airport in Charleston they drove downtown and stopped by the Mother Emanuel Church. He walked through the crowd, up to the church, where a group of men were singing and praying. It was a beautiful and shocking experience for him and he found himself standing and looking at unity in spite of the pain, in the midst of worship to God despite an unthinkable tragedy. He remembered the images from Charleston, thousands of folks walking across a bridge together in unity, specifically the members of the church, the choice they made to forgive. Nikki Haley wrote in her book *"The choice the families made for forgiveness rather than hate literally made it possible for the state to heal."* These acts of forgiveness shocked our nation. If you recall, our nation was dealing with the fallout from the unfolding of events in Ferguson related to Michael Brown in August 2014, Tamir Rice in Cleveland in November 2014, Freddie Gray in Baltimore in April 2015, and the shooting of Walter Scott in Charleston on April 2015. The nation had raw open wounds regarding race. All eyes were on South Carolina and it could have turned very ugly. The way the family members of the victims, the members of Mother Emanuel Church, and the way our state responded after the tragic events at Mother Emanuel Church have never left him. It is a shining example of grace, forgiveness and healing. This forgiveness and grace promoted unity. A few months later we experienced flooding in our state to the degree that it was branded then and remains known today as the 1,000 year flood. He had the honor of leading a team of volunteers and they went to help cleanup in the Coldstream neighborhood. This was one of the most sobering experiences he had ever had. In this case mutual support promoted healing. He specifically remembered walking the street, not really even knowing where

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to begin, when a man invited his crew up to his house and gave them instructions on what he needed to be done. This man, whose belongings were about to be all taken out to the street, who had a terribly damaged home, had a joyful heart and prayed with them then got them to work. He vividly remembered his face. He will also never forget how many trucks, teams, and people were there, all to help each other. The people of our community and the people from our state came together. We were able to heal because we came together. He then invited everyone to travel back to World War II. Our country unified at the face of a common enemy. Things were certainly not easy after our homeland was attacked in Pearl Harbor, but we came together as a people and as a country to defeat our enemy and come out victorious after World War II. The grit, determination and hard work put in both by our soldiers at war and by the support of industry and families back home, this unity helped us arrive on the other side. Our nation thrives when we are united. It brings us to today and the unexpected pandemic we face. The effects of the pandemic have been absolutely shocking, they have rocked our world, our country, our state and our Town. It is not necessary to hash out all of the challenges that our community has faced as a result of the pandemic, as each of us have been feeling the effects and continue to feel the effects. He understands the controversial nature of the mask requirement in the Town of Lexington. A relevant question is “what is the desired outcome?” He would like to suggest to everyone that our desired outcome, our goal, is to beat this virus. To arrive on the other side of this pandemic just like we did with the many challenges mentioned. He stated that he was ready and knew everyone was ready to move on with their lives and a return to normalcy. Each Councilmember has had to make a decision on masking with the information they were provided and from the sources near them directly impacted by their decision, such as the school district and local hospitals. He could not help but feel very concerned by the divisions among us, while also feeling hopeful because of the paths paved for us by shared past experiences and knowing those experiences lead us to unity in our community. Nikki Haley said *“During anxious times, it can be tempting to follow the siren call of the angriest voices. We must resist that temptation. The way we handle issues and the way we talk about issues should be toward solutions, not division.”* Councilmember Baker stated friends, Town, despite our preferences, despite our differences, let’s stand united today. Councilmember Baker’s call today was that we come together, that we unite once again, that we adopt a spirit of love and a spirit of grace, working together as a community to beat this virus. He added that we have such wonderful examples as a nation, as a state and as a community of coming together to achieve a common goal. He asked to not let this time be any different, together we can win. He implored each person to join him in this call for unity, having a spirit of grace and knowing that we are all working together to overcome this virus and move on with our lives, with our freedoms intact and continuing our quest for life, liberty and the pursuit of happiness.

Mayor MacDougall thanked Councilmember Baker. He asked if there were any further comments from Council.

Councilmember Maness commended Councilmember Baker on his message and added that it was excellent and she was sorry he did not read it when they had a lot of people in the audience, but thanked him for doing it now.

Councilmember Baker later acknowledged that his wife was present tonight and he wished her a Happy 8th Anniversary and he appreciated that she chose to spend it here in the Council Chambers with them. He also thanked his father for attending tonight along with Pastor Mario Brayboy from the Lexington Church of Christ.

NEWS MEDIA QUESTIONS: None.

PUBLIC COMMENTS

Mr. Bob Brockwell, 101 Haynesworth Place, Lexington, Manager of Sonic located at 312 Columbia Avenue, Lexington stated that he didn't think Mr. Fuller knew he was present. He stated that Sonic is a franchise, but it is not a huge corporation. He added that he owns part of the business, Mr. Irons owns part of the business and they have other investors so this is all local money and this is all a local business, not a big company in an ivory tower somewhere out west. Mr. Brockwell wished to explain the reason they want to do this because he was sure people wondered why just move across the street. He stated that the Bojangles is bigger and his current restaurant was built in 1993 when he opened it. He added back then they did not have breakfast, they did not have late night, they did not have the desserts they have now and basically had burgers, hot dogs, fries and tots. Mr. Brockwell stated that now they have all the other stuff that you see on their menu. He added there is not really a lot of room left in that little building and Bojangles is a bigger building, a bigger opportunity and in turn they can help the community. He stated that because he would have a bigger building he would be able to do more sales, take better care of customers and give a lot more people jobs, because with the money coming in you have to have people to fix the food. Mr. Brockwell stated that is the main reason they want to do the Bojangles thing and move across the street. He added that they did not want to bail on anything, they want to stay in Lexington, he loves Lexington and his kids grew up here. Mr. Brockwell stated that he just wanted to fill in what Mr. Fuller had so Council would have an understanding of where they are and why they're doing what they want to do there.

Mayor MacDougall thanked Mr. Brockwell and added that it was great information. He asked Mr. Brockwell if he knew how many square feet he had at the restaurant. Mr. Brockwell responded he thought it was a little less than 2,500 square feet for just the small building and when they added the dining room it probably changed the number. Mayor MacDougall confirmed that it was primarily the operational side.

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ADJOURNMENT

Mayor MacDougall thanked the Council members and citizens for attending the Council meeting. He thanked those at home for viewing the Council meeting on cable channel 1301 which will also be replayed several times during the week.

Mayor MacDougall stated that without objection from Council, he declared the meeting adjourned. The Regular Council meeting was adjourned at 8:38 p.m.

Respectfully submitted,

Becky P. Hildebrand, CMC
Municipal Clerk

APPROVED:

Steve MacDougall
Mayor

FOIA COMPLIANCE – Public notification of this meeting was published, posted and mailed in compliance with the Freedom of Information Act and the Town of Lexington requirements.